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SERVICE DATE – APRIL 18, 2013

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 303 (Sub-No. 40X)

WISCONSIN CENTRAL LTD.—ABANDONMENT
EXEMPTION—IN KAUKAUNA, OUTAGAMIE COUNTY, WIS.

Decided: April 17, 2013

Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 1.10 miles of rail line between milepost 114.00 and milepost 112.9, in Kaukauna, Outagamie County, Wis. Notice of the exemption was served and published in the Federal Register on March 20, 2013 (78 Fed. Reg. 17,282). The exemption is scheduled to become effective on April 19, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on March 25, 2013. In the EA, OEA stated that the Wisconsin Department of Natural Resources (WDNR) submitted comments on the potential impacts to various resources from the proposed abandonment. These resource areas include water quality, wetlands, 100-year floodplain, wildlife sanctuaries, endangered or threatened species and critical habitats, soil and water conservation, coastal zone management, land uses, and waste and demolition disposal. Accordingly, OEA recommends that a condition be imposed requiring that WCL consult with WDNR regarding its concerns and comply with the reasonable requirements related to salvage.

Comments to the EA were due April 9, 2013. No comments were received. Accordingly, the condition recommended by OEA in the EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On March 28, 2013, the City of Kaukauna (proponent) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with WCL for acquisition of the line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, proponent has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on April 10, 2013, WCL has indicated its willingness to negotiate with the City of Kaukauna for interim trail use.

Because the proponent's request complies with the requirements of 49 C.F.R. § 1152.29 and WCL is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate

an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, WCL may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on March 20, 2013, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit proponent to negotiate with WCL for trail use for the rail line, for a period of 180 days from the service date of this decision and notice until October 15, 2013. The abandonment is also subject to the condition that WCL shall, prior to commencement of any salvage activities, consult with WDNR and comply with its reasonable requirements related to salvage.
3. The request for a NITU, under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is granted.
5. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
6. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its financial responsibilities for the right-of-way.
7. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
8. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

9. If an agreement for interim trail use/rail banking is reached by October 15, 2013, for the right-of-way, interim trail use may be implemented. If no agreement is reached, WCL may fully abandon the line.

10. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.